

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

BILLY MASON McCUNE-ESKRIDGE,

Petitioner,

v.

CIVIL ACTION NO. 5:04-0865

WEST VIRGINIA DIVISION  
OF CORRECTIONS, *et al.*,

Respondent.

JUDGMENT ORDER

By Standing Order entered on July 21, 2004, and filed in this case on August 17, 2004, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation. Magistrate Judge VanDervort filed his proposed findings and recommendation on August 30, 2005. In that filing, the magistrate judge recommended that this court grant the defendants' Motion to Dismiss (Doc. No. 23), dismiss Plaintiff's Complaint without prejudice, and remove this matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Findings and Recommendation. No party has filed objections within the requisite period, and the failure of any party to file such objections constitutes a waiver of such party's right to a de

novo review by this court. Thomas v. Arn, 474 U.S. 140 (1985); Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Having reviewed the Proposed Findings and Recommendation filed by the magistrate judge, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby **GRANTS** the defendants' Motion to Dismiss (Doc. No. 23), **DISMISSES** plaintiff's Complaint (Doc. Nos. 3 & 17) without prejudice, and **REMOVES** this matter from the court's docket.

The Clerk is directed to mail a certified copy of this Order to all counsel of record, the plaintiff, and Magistrate Judge VanDervort.

**IT IS SO ORDERED** this 26th day of September, 2005.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Chief Judge